

Message Text

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ACTION EUR-12

INFO OCT-01 EA-06 ISO-00 AID-05 CEA-01 CIAE-00 COME-00

EB-07 FRB-03 INR-07 NSAE-00 CIEP-01 SP-02 STR-04

TRSE-00 LAB-04 SIL-01 SAM-01 OMB-01 L-03 DODE-00 SS-15

NSC-05 /079 W

----- 088110

R 081005Z JUL 75

FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC 9218

INFO ALL EC CAPITALS 865

AMEMBASSY BERN

AMEMBASSY TOKYO

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E.O. 11652: N/A

TAGS: EIND, ETRD, OECD, EEC

SUBJECT: THE OECD GOVERNMENT PROCUREMENT CODE AND THE EC

REF: A) EC BRUSSELS 6031

B) STATE 151341

C) EC BRUSSELS 5140

D) BERN 2759

SUMMARY:

1. THE MISSION HAS PROVIDED EC COMMISSION OFFICIALS WITH THE US SUBMISSION FOR THE AGENDA OF THE SEPT. 15 MEETING OF THE OECD TCWP ON GOVERNMENT PROCUREMENT. THEY AGREE THAT THE MAJOR ELEMENTS OF AN OECD CODE SHOULD BE ACHIEVED BY EARLY 1976. HOWEVER, THE EC CANNOT GO VERY FAR AT THE SEPT. 15 MEETING BECAUSE THE EC PERMREPS WILL PROBABLY NOT HAVE DISCUSSED THE EC DRAFT DIRECTIVE ON GOVERNMENT PROCUREMENT BY THAT TIME AND REACHED AGREEMENT ON EC DRAFT DIRECTIVE ISSUES AFFECTING THE CODE. SIGNIFICANT PROGRESS WILL HAVE TO AWAIT A LATER TCWP MEETING. THE ISSUE PREVENTING PROGRESS ON THE

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EC DRAFT DIRECTIVE IS TREATMENT OF THIRD COUNTRY GOODS IN

FREE CIRCULATION WITHIN THE EC. THE FRENCH WANT AN EC POLICY CALLING FOR THE EXCLUSION OF SUCH GOODS FROM THE SCOPE OF THE EC DRAFT DIRECTIVE IN ORDER TO STRENGTHEN THE EC POSITION IN THE OECD NEGOTIATIONS. END SUMMARY.

2. ON JULY 3 A MISSION OFFICIER MET WITH EC COMMISSION OFFICIALS DERISBOURG, WHO REPRESENTS THE EC IN THE OECD TCWP ON GOVERNMENT PROCUREMENT, AND STRUXIANO, WHO HANDLES THE EC DRAFT DIRECTIVE ON GOVERNMENT PROCUREMENT. WE CONVEYED TO THE EC OFFICIALS THE US SUBMISSION TO THE OECD SECRETARIAT FOR THE TCWP SEPT. 15 MEETING AS REQUESTED IN REFTEL A.

3. DERISBOURG SAID THAT THE COMMISSION AGREES WITH US THAT AN AD REFERENDUM AGREEMENT ON THE MAJOR ELEMENTS OF AN INTERNATIONAL CODE SHOULD BE ACHIEVED AMONG OECD MEMBERS BY EARLY 1976. HE SAID THAT AN ARTICLE 113 COMMITTEE MEETING ON MAY 22 GAVE THE COMMISSION INSTRUCTIONS TO ARRIVE AT AD REFERENDUM SOLUTIONS ON THE CODE IN SIX TO NINE MONTHS. THE SIX-TO-NINE-MONTH PERIOD WAS BASED ON AN ASSESSMENT OF A) THE TIME IT WOULD TAKE TO REACH AGREEMENT ON THE EC DRAFT DIRECTIVE ON GOVERNMENT PROCUREMENT AND B) THE AMOUNT OF TIME REMAINING BEFORE DISCUSSIONS OF THE GOVERNMENT PROCUREMENT CODE WOULD PROBABLY SHIFT FROM THE OECD TO THE GATT. THIS BEING SAID, DERISBOURG CAUTIONED ABOUT EXPECTING TOO MUCH PROGRESS IN THE SEPTEMBER TCWP MEETING BECAUSE THE EC PERMREPS WILL NOT EVEN TAKE UP THE EC DRAFT DIRECTIVE UNTIL SEPTEMBER (THE DATE IS NOT SET.). HE HOPED THAT SUBSTANTIAL PROGRESS ON THE DRAFT DIRECTIVE WOULD BE ACHIEVED BETWEEN THE SEPTEMBER TCWP MEETING AND ONE LATER IN THE FALL. A CONTACT IN THE ITALIAN PERMANENT REPRESENTATION TOLD US THAT THE ITALIANS, ALTHOUGH NOT ENTHUSIASTIC ABOUT THE DRAFT DIRECTIVE, WILL PUSH IT FORWARD DURING THE ITALIAN PRESIDENCY.

4. DERISBOURG QUESTIONED OUR INCLUDING "CONDITIONS FOR AWARDS" AS A MAJOR OUTSTANDING ISSUE. HE RECALLED THAT TWO MEETINGS AGO THE EC HAD AGREED THAT "ALL THE ELEMENTS" UPON WHICH A CONTRACT AWARD WILL BE BASED LIMITED OFFICIAL USE

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MUST BE NOTIFIED TO POTENTIAL BIDDERS AND HE THOUGHT THAT EC "CONCESSION" SETTLED THE ISSUE.

5. DERISBOURG IS WORKING WITH THE MEMBER STATES ON EC AGENDA SUGGESTIONS FOR THE SEPT. 15 MEETING. HE NOW EXPECT TO SEND IT TO THE OECD SECRETARIAT BY JULY 15. THE AGENDA ITEMS HE IS SUGGESTING ARE:

A) SCOPE AND APPLICATION OF THE INSTRUMENT (I.E.

EXCEPTIONS AND DEROGATIONS);

B) ADHESION TO AND WITHDRAWALS FROM THE GOVERNMENT PROCUREMENT CODE. (DERISBOURG SAID THAT THE EC POSITION IS THAT IF THE "KEY" COUNTRIES DO NOT ADHERE TO THE CODE OR CEASE TO APPLY IT, THEN NO COUNTRY WOULD BE ABLIGED TO HONOR IT VIS-A-VIS ANY OTHER COUNTRY, I.E., IT WOULD BE NULL AND VOID);

C) STATISTICS FOR SURVEILLANCE PRUPOSES (NOT FOR NEGOTIATIONS);

D) SURVEILLANCE MECHANISMS AND DISPUTES SETTLEMENT.

6. DERISBOURG BELIEVES THAT IF DISPUTES SETTLEMENT AND THE SCOPE OF APPLICATION CAN BE SETTLED, OTHER OUTSTANDING ISSUES WILL BE MUCH EASIER TO RESOLVE. REGARDING SCOPE OF APPLICATION, HE SAID THAT AT THE SEPTEMBER MEETING THE EC WANTS TO HIT THE JAPANESE HARD ON EXCEPTIONS GIVEN IN JAPAN FOR SMALL AND MEDIUM SIZED FIRMS.

7. IN A SEPARATE TALK WITH STRUXIANO AND A PERM REP CONTACT, WE OBTAINED ADDITIONAL INFORMATION ON THE DIFFICULTIES THE MEMBER STATES ARE HAVING WITH THE DRAFT RESOLUTION ON TREATMENT OF THIRD COUNTRY GOODS IN FREE CIRCULATION WITHIN THE COMMUNITY UNTIL AN INTERNATIONAL AGREEMENT IS REACHED ON GOVERNMENT PROCUREMENT (SEE REFTEL A). THE FRENCH (AND THE ITALIANS) DO NOT ACCEPT THE SOLUTION OFFERED BY THE COMMISSION REPORTED IN REFTEL A WHICH, ALTHOUGH CALLING FOR COORDINATION OF MEMBER STATE POLICIES TOWARD THIRD COUNTRY GOODS, IN PRACTICE WOULD PERMIT EACH MEMBER STATE TO EXCLUDE OR ACCEPT THIRD COUNTRY PRODUCTS AS THEY WISH. THE FRENCH ARE ARGUING THAT TO STRENGTHEN THE NEGOTIATING POSITION OF THE EC IN LIMITED OFFICIAL USE

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THE OECD NEGOTIATIONS THERE SHOULD BE A) A COMMON POLICY ADOPTED BY ALL MEMBER STATES AND B) UNTIL THE ISSUE IS NEGOTIATED IN THE MTN, THE GENERAL POLICY WOULD BE THAT NON-EC GOODS IN FREE CIRCULATION WITHIN THE EC WOULD BE EXCLUDED FROM THE SCOPE OF THE EC DRAFT DIRECTIVE ON GOVERNMENT PROCUREMENT. WE UNDERSTAND TO ACHIEVE THIS RESULT THE FRENCH WOULD LIKE THE DRAFT DIRECTIVE ITSELF TO CONTAIN SPECIFIC LANGUAGE LIMITING APPLICATION TO EC PRODUCTS UNTIL AN INTERNATIONAL AGREEMENT IS REACHED.

8. STRUXIANO SAID THAT IT NOW HAS BEEN DECIDED THAT THE COMMISSION (I.E. STRUXIANO) RATHER THAN A COUNCIL WORKING GROUP WILL REWRITE THE DRAFT RESOLUTION AS HAD BEEN REPORTED IN REFTEL A. (THERE ARE

SERIOUS LEGAL QUESTIONS AS TO WHETHER THE DRAFT DIRECTIVE ITSELF CAN EXCLUDE NON-EC GOODS ALREADY IN FREE CIRCULATION WITHIN THE EC.) BOTH DERISBOURG AND STRUXIANO CLAIMED THAT UNTIL TREATMENT OF THIRD COUNTRY GOODS IS SETTLED, THERE IS UNLIKELY TO BE PROGRESS ON OTHER OUTSTANDING PROBLEMS IN THE DRAFT DIRECTIVE. THE FRENCH CONSIDER THIS A CRITICAL POINT IN ESTABLISHING AS STRONG A NEGOTIATING POSITION AS POSSIBLE AND WANT IT RESOLVED BEFORE THEY MOVE ON TO OTHER OUTSTANDING ISSUES. MYERSON

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: POLICIES, GOVERNMENT PROCUREMENT, AGREEMENT DRAFT, TRADE ORGANIZATIONS, MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 08 JUL 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: izenbei0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975ECBRU06139
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750235-0348
From: EC BRUSSELS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750774/aaaacnwr.tel
Line Count: 179
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 EC BRUSSELS 6031
Review Action: RELEASED, APPROVED
Review Authority: izenbei0
Review Comment: n/a
Review Content Flags:
Review Date: 22 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <22 APR 2003 by SmithRJ>; APPROVED <22 SEP 2003 by izenbei0>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: THE OECD GOVERNMENT PROCUREMENT CODE AND THE EC
TAGS: EIND, ETRD, OECD, EEC
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006